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PART II—Section 3—Sub-section (ii)

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NEW DELHI, FRIDAY, APRIL 11, 1958/CHAITRA 21, 1880

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 9th April, 1958/19th Chaitra, 1880 (Saka)

S.O. 322:—In pursuance of the provisions of sub-section (1) of section 86 of the Representation of the People Act, 1951, the Election Commission hereby publishes a copy of the Election Petition No. 3 of 1958, presented to the Election Commission on the 21st March, 1958, under section 81 of the said Act, by Shri Bhim Rao, son of Shri Shesh Rao Nayak, resident of Sawana, Taluq Hingoli, District Parbhani, Bombay State, calling in question the election to the House of the People from the Jalna Constituency of that House of Shri Ankush Rao, son of Shri Venkat Rao Ghare, resident of Village Kendhali and Partud Town, District Parbhani, Bombay State.

Presented to me by Shri S. S. Deshmukh who has been duly authorised by the petitioner to present this petition and whose signature has been obtained in the margin and attested as having been signed before me this twenty-first day of March one thousand nine hundred and fifty-eight.

(Sd.) DIN DAYAL, 21-3-58.

Under Secy.

Election Commission, India.

BEFORE THE ELECTION COMMISSION OF INDIA AT NEW DELHI.

ELECTION PETITION No. 3 OF 1958

Bhim Rao s/o Shesh Rao Nayak, Age 54 years, occupation: Agriculture, r/o Sawana, Taluq Hingoli; Dist. Parbhani (Bombay State)—*Petitioner.*

V/s

Ankush Rao s/o Venkat Rao Ghare, Age 35 years, Occupation: Practice at the Bar, r/o Village Kendhali and Partud Town, Dist. Parbhani (Bombay State)—*Respondent.*

CLAIM

For the Declaration that the election of Ankush Rao s/o Venkat Rao from Jalna Parliamentary Constituency to the House of the People is void and that the petitioner is the duly elected candidate from the said Constituency, under Section 80 of the Representation of the People Act, 1951.

The humble petition of the above named Petitioner most respectfully sheweth:—

(1) That the Petitioner was a candidate to bye-election from Jalna Parliamentary Constituency, called upon to fill the vacancy caused due to the death of Saif Tayabji who was returned Member of Parliament from the said Constituency in the second General Elections.

(2) That the respondent was the only other candidate who filed the nomination papers and contested the above election. The poll in the said Constituency took place on 2nd February, 1958, and counting of votes was completed on 6th February, 1958. The Returning

Officer (Collector, Aurangabad) declared the respondent to be the duly elected candidate from the said Constituency he having secured 2,815 votes more than the votes polled by the Petitioner on 6th February, 1958, at about 6-30 P.M.

(5) That both the Petitioner and Respondent contested the above bye-election on party tickets, the former as an official candidate of the Indian National Congress while the latter as a candidate sponsored by the Samyukta Maharashtra Samiti. The respondent is the worker of Peasant's and worker's Party which is one of the constituent parties of Samyukta Maharashtra Samiti. Hence the respondent was allotted the symbol of 'Cart' with has been the symbol of his Party.

(4) That the above-named respondent, his Agents and workers combined committed corrupt practices amounting to election offences in conduct of election campaign. This materially affected the results of the election and interfered in free choice of electors. The minds of voters throughout the Constituency were over-burdened due to threats of bodily, mental and material injuries by the respondent, his Agents and workers. Hence the Poll was not 'free and fair' as is revealed by the voting figures. The Respondent, his Agents and Workers committed the following corrupt practices:—

(a) The Respondent, his Agents and workers bribed the voters to vote in his favour in several towns and villages throughout the Constituency to either vote in favour of respondent or in alternative not to vote at all. This was effectively manipulated by the Agent and Workers of Respondent by offering cash payment of Re. 1 per vote either under the plea of loss in wages due to the Polling Day or as a direct monetary temptation to vote in his favour. For instance:—

(i) The Respondent in the evening of 1st February, 1958, personally went round the poor 'electors' of his village i.e., Kendhali Talukha Partud, belonging to Mang and Chammar caste and distributed money amongst them at the rate of Re. 1 per vote as a loss in wages. He was accompanied by his Polling Agent on this mission.

(ii) One Mr. Miyajan Deshmukh of Jintoor town, Dist. Parabhani obtained Rs. 200 from the respondent on 31st January, 1958, and the said Miyajan Deshmukh distributed the said money to labourers from Muslim Community of the above town on the night between 1st and 2nd of January, 1958. He distributed the above amount at the rate of Re. 1 per voter as a direct monetary temptation to vote for the Respondent.

(b) Respondent in his village and adjoining villages of Partud Town threatened the electors of dire consequence if they do not vote for him. The respondent threatened of removal from employment of certain electors of his village if they do not vote for him during his round referred to in para 4(a) (i) above. Similarly his Agents and workers threatened the electors from Muslim Community in particular of completely uprooting their families. These threats were freely indulged in by Respondent, his agents and workers almost throughout the Constituency with varying degrees and nature of threats. For instance:—

(i) One Rambhau Maratha of Jalna Town threatened Muslim voters from Darga and Rajmahal Areas in Jalna with these words.

As a result of above threat the following electors from the said area did not vote. Khaji Miya s/o Sk. Rahim, Bismilabi w/o Khaja Miya, Chote Miya s/o Mohd. Usman.

(c) The Respondent caused to be printed and published false news item in 'Marathwada' a bi-weekly published from Aurangabad and also in 'Maratha' a daily published from Bombay. This false news item stated that Petitioner claims the votes on ground that he is Maratha and Petitioner mis-informed some electors that respondent being Brahmin they should not vote for him. This was duly contradicted by Petitioner in 'Lokmanya' daily. The Petitioner contradicted both the allegations namely that he solicited votes on communal ground and that Respondent is Brahmin. Purporting to counter these contradictions Respondent again inserted a news item in the said 'Marathwada' and while doing so laid stress upon the cast of the Respondent with a view to indirectly influence the majority of the voters in the constituency to vote for respondent he being a 'Maratha' by caste. These false news items were published with the dual intention of damaging the reputation of Petitioner and his workers as communal minded.

(d) The respondent printed, published and circulated a pamphlet in Urdu entitled 'An Appeal by women in the name of Humanity' which contained the following:—

(i) The necessity to support Samyukta Maharashtra Samithi in direct contest between it and Congress in ensuring bye-election and the necessity to inflict serious harm to Congress on the ground that Samyukta Maharashtra movement is mass popular and Samithi is the organisation with the avowed intention of fulfilling the goal of the establishment of Samukta Maharashtra.

(ii) The necessity to weigh and judge the personal character of the contesting candidates.

(iii) Profuse praise of respondent's personal character and his achievements as a political worker.

(iv) Extremely damaging and false statements in relation to the personal character of Petitioner, that he has victimised the minority community, that he took advantage of the circumstances and caused grave injustice and suppression that he forcibly possessed ladies who are from respected families but extremely helpless and depressed.

(v) An appeal to elector in the name of humanity whether he would vote for such a candidate (meaning Petitioner) who is filled with so many wrongs. Is an elector completely devoid of emotion for good things and resentment for bad?

(vi) A certainty that all male voters and particularly women would strike a death blow to Congress candidate.

That the above referred to pamphlet was printed by the respondent, published by causing its known and circulated to almost all Urdu knowing electors of the Constituency, and circulated throughout the length and breadth of Constituency by making full use of entire election machinery of the respondent. The Respondent circulated this pamphlet only one day prior to Polling Day and therefore Petitioner had no chance to contradict it by counter pamphlet. The Respondent printed and published the above named pamphlet without printer's or publisher's name over it which by itself amounts to offence under the Press Act. The Petitioner reliably understands that two presses have printed the above. The Respondent did this with an intention of damaging the personal reputation of Petitioner by extremely defamatory statement in relation to his personal conduct. This was false and did not contain a grain of truth with full and personal knowledge of respondent. That the statements in above pamphlets were false and he never believed them to be true.

Circulation and use of Pamphlet.—Shri P. K. Atre of Bombay addressed Public Meetings (one each) at Jalna, Partud, Sailu and Ambad in which he publicly referred to the contents of the above pamphlet and urged his listeners to vote for Samithi on the grounds mentioned therein. He also stated in all these meetings "you will soon get this in the form of pamphlet issued by us." Respondent who also attended these meetings spoke after the principal speaker i.e., Shri P. K. Atre and urged the voters in the light of Atre's address to them. Thereafter he acquired the services of the following to widely circulate the said pamphlet on 1st February, 1958, simultaneously throughout the constituency:—

- (i) Shri Tilwant Ali, M.L.C., of Parbhani for Jalna town.
- (ii) Shri Sk. Rahim of Osmanabad for Jalna town.
- (iii) Shri Kasham Ali, Advocate, of Parbhani for Partud.
- (iv) Shri Miyajan Deshmuk of Jintoor for Jintur Town.
- (v) Shri Osman Ali of Aurangabad for Bhokardan and Jaferabad.
- (vi) Shri Bakshi Hussain alias Baba Darga of Ambad for Ambad.

The above referred to men employed other workers of respondent in consultation with him and managed to circulate in their respective regions. One S. K. Rahim of Osmanabad distributed the above pamphlet on 1st February 1958 in the public meeting addressed by Shri B. G. Gadhe, Shri Vijayendra Kabra and the Petitioner. Shri Vajayendra Kabra referred to this in his address to the said meeting and contradicted the contents of this pamphlet. He also gave the warning that this was not fair in election campaign and amounts to election offence.

(e) The Respondent employed vehicles like Tongas, Bullock carts and Motor cars to carry voters to and from Polling stations particularly in towns of Jalna, Ambad, Jintoor and villages like Watoor, Bhogaon etc. The candidate and/or his Agents paid in cash for conveyance of by such vehicles, for instances:—

- (i) Some taxis, among them BYG 147, was employed by respondent and paid on his behalf to carry muslim lady voters in Jalna town on polling day.
- (ii) Few tongas, among these tongas of Nandu and Hari each were employed by respondent and paid on his behalf to carry Muslim lady voters from Rajmahal and Darga areas of Jalna Town, on polling day. A written complaint was lodged with the Presiding Officer of the said booth the receipt of which is attached herewith.
- (iii) Some bullock carts were employed by the Respondent and paid on his behalf to carry voters of Bhogaon Taluqa Jintoor and Watoor Taluqa Partud. Many Muslim lady voters utilised this paid conveyance at Bhogaon and lady voters of upper class Hindu families at Watoor.

(f) The Respondent incurred expenses and authorised some other expenses in contravention of Section 7 of the Representation of the People Act 1951. This matter is dealt with in detail in para 9 of this petition.

(g) The Respondent, his Agents and workers procured the assistance of Government servants specified in sub-section 7 of Section 123 of the Representation of People Act 1951 to further the prospects of his election and even to threaten the voters to vote for him, or to refrain from voting for the Petitioner. For instance:—

- (i) The services of one Shri Moghe, Dist. Inspector of Schools, Aurangabad were acquired by the Respondent and his Election Agent, Pandit Rao Gavhane of Aurangabad, to canvass and propagate for the Respondent. Shri Moghe vigorously solicited help from his subordinate teachers and even openly canvassed for votes in favour of the Respondent. This was noticed and after a request to the said Shri Moghe was reported to the Aurangabad District Congress Committee by Hokardan Taluqa Congress Committee. Upon this report and after its verification President of Aurangabad District Congress Committee wrote to the Deputy Director of Education, Aurangabad on 23rd January 1958 i.e. more than a week prior to the polling Day and still the said Shri Moghe manipulated to be appointed as Presiding Officer at Badnapur, Taluqa Jalna. There too he helped the Respondent and even went to the extent of allowing personification for obtaining ballot papers. He issued ballot papers to one Shri Ibrahim s/o Miyabhai who personified and misrepresented for Shri Ismail s/o Miyabhai. On alleged identification by the Polling Agent of Respondent and in spite of the protests by Petitioner's Agent, Returning Officer was specifically requested not to appoint the said Shri Moghe as Presiding Officer in view of his open canvassing for the Respondent.
- (ii) One Shri Deshpande was the Presiding Officer at Polling Booth at village Kupta Taluqa Jintor. His attention was drawn to the wall poster of Respondent which was pasted on the wall of the booth within 100 yards from the ballot boxes at prominent place and therefore it influenced the incoming voters. Upon a written complaint by the Election Agent of the Petitioner the said poster was seized under Panchnama by the said Presiding Officer. But the Respondent came to the booth at about 3.30 P.M. and influenced the said Presiding Officer to hush up the matter. Thereupon the said presiding Officer did not enquire as to who pasted the above poster nor did he take any action, besides seizing the said poster.
- (iii) The Respondent visited the village Qhansawanji Taluqa Ambad where he called the village officers of village Dhakephal which is about 2 miles from the said constituency. The Respondent asked them as to how many voters from Dhakephal would vote for him. The said village officer i.e. Patel and Patwari informed him that nobody from their village can vote for the Respondent. Thereupon the respondent conspired with the Patels and Patwaris of the Village Dhakephal and successfully induced them to misdirect the voters. The said village officers informed the voters that they are not entitled to vote in this bye-election with the result that not a single voter turned up at the Polling Booth Qhansawanji. Thus with the tactfully acquired services of Patel and Patwari of one village the respondent deprived the Petitioner of near about 300 votes.
- (iv) Upon instigation of Respondent through his Polling Agent of Mastgad Booth in Jalna Town one police Constable Badge No. 544 forcefully entered the Jalna Town one Branch Office of Bhartiya Dalit Jati Sangh and tore off the wall poster of Shri Jawaharlal Nehru. He created a show by shouting at the persons in the office and thereby collected many voters who were frightened by his overtures. This spread a wave of fear in the scheduled cast voters of the area and therefore they did not vote. This occurred on 2nd February 1958 in the immediate presence of one Bansilal of Jalna.
- (5) The respondent, his Agents and workers convened a public meeting at Jintoor on a day prior to the Polling Day but the Respondent and V. D. Deshpande addressed the said public meeting up to 2 A.M. on the Polling day. Thereby Respondent and the said V. D. Deshpande contravened provisions of Section 126 of the Representation of the People Act and the attention of P.S.I. Jintoor was drawn to this by the Election Agent of the Petitioner whereupon H.S.I. ordered respondent and others to disperse.
- (6) That the Respondent through his Agents and workers canvassed in the prohibited area of 100 yds. from the Polling booths on the Polling Day and this influenced the voters. Some such booths were canvassing in 100 yds. was noticed and complained of by petitioner are, namely booth Nos. 2, 5, 9, 10, 16, 20 at Jalna Town and the Respondent is guilty of such canvassing through his Polling Agents of the concerned booths. The Respondent through his Agents and workers pasted his wall poster at the prominent place of entrance to Polling booth at Village Kupta, Taluqa Jintoor and said poster was removed under Panchanama by the concerned Presiding Officer on written complaint by Election Agent of the Petitioner. But the Petitioner or his election Agent did not hear anything in that regard since then.

(7) That Respondent through his Polling Agents at Jalna Town offered Re. 1 for every ballot paper to be removed from the Polling Station through the electors who receive the same and these ballots to be acquired were placed in the ballot box of the Respondent by his Polling Agent and workers. As a result of above practice several bundles of more than one ballot papers folded together were detected at the time of counting of votes. This fact was brought to the notice of Returning Officer but was overlooked by him as not in contravention of any rule of counting. The petitioner reliably learns and he believes that as a result of such illicit transport of ballot papers, some ballot papers which were issued from one booth in Jalna Town had been inserted in the ballot box kept at another booth.

(8) That Respondent through his Polling Agent caused certain persons to pose as electors bearing a different name from their own and obtained not a few votes by such personification. This was abetted further by his polling agents as they identified those false electors knowing their real identity. Such personification was detected and complained of the Polling booths Badnapur Taluk Jalna and Kumbhar Pimpalgaon Taluq Ambad.

(9) That Respondent incurred on expense or authorised some without maintaining accounts thereof or obtaining vouchers to certify such payments. The return of Election expenses submitted by the Respondent does not include some items. For instance his payment for advertisement to 'Maratha' daily published from Bombay do not find place in the statements of Election Returns. Similarly the Respondent through his Agents had paid one Tongawala for hire of conveying voters to Polling Booth in Jalna Town. The amount paid was Rs. 10 Payee was Tongawala by name Nandu.

(10) The Respondent through his Agents and workers manipulated to strike off with red pencil the names of several voters from the Official lists. These lists were prepared by clerical staff of Collectorate, Aurangabad and various Tahsil Offices in the Constituencies. These names were struck off inspite of the fact their names were never included in any list of omissions prepared annually on revision of electoral rolls. The results of election have materially been affected by such manipulation since all such voters were the persons who would have voted for the Petitioner had they been given the chance to do so.

(11) That the respondent, his Agents and workers and supporters have committed corrupt practices and election offences as mentioned above and obtained votes by improper means. In spite of these the respondent has been declared elected by a narrow margin. Had there been no such commission of corrupt practices on the part of the Respondent and his Agents and free and fair voting would have taken place, the Petitioner submits that he would have been elected by overwhelming majority. The election of respondent as an elected candidate is therefore void. The petitioner is therefore entitled to get the declaration that election of Respondent is void. That therefore, the Petitioner in addition to calling in question the election of Respondent as a returned candidate claims for a declaration that he himself has been duly elected and is entitled to get such declaration.

(12) That the Petitioner is enclosing herewith the following:—

- (1) A receipt for the deposit of Rs. 1,000 (Rs. One thousand only) with D.T.O. Parbhani No. 23 dated 11th March 1958.
- (2) The list of documents enclosed herewith.
- (3) The above said documents.
- (4) The list of documents which will be produced or will be called for on which the Petitioner rely (The Petitioner reserves his right to rely, call for or produce certain other documents, though not included in this list).

PRAYER

It is therefore prayed:—

- (1) That the election of Respondent from Jalna Parliamentary Constituency be declared to be void.
- (2) That the respondent be declared to be disqualified for such period as is deemed necessary for corrupt practices alleged above.
- (3) That the petitioner be declared to be candidate duly elected in place of respondent.
- (4) That cost of this petition be ordered to be paid.

or

Any other relief which the Tribunal may deem necessary be awarded.
For which the Petitioner for ever shall pray.

(Sd.) Petitioner.

VERIFICATIONS

I, Bhim Rao s/o Shesh Rao Deshmukh, an election Agent of the above named Petitioner.

I, Bhim Rao s/o Shesh Rao Naik, do hereby affirm and declare that contents of paras 1 to 11 of this petition are true and correct to the best of my knowledge and belief. Hence verified, this the 13th day of March 1958 at Parbhani.

(Sd.) Petitioner

I, Shivaji Rao s/o Shanker Rao Deshmukh, an election Agent of the above named Petitioner do hereby declare that contents of Paras 1 to 11 of this petition are true and I believe them to be so. Hence verified, Parbhani, dated 13th March 1958.

List of Newspapers appended to the Petition

1. Marathwada 8 pages dated 26th January 1958.
2. Marathwada 8 pages dated 30th January 1958.
3. Marathwada 8 pages dated 6th February 1958.
4. Maratha 4 pages dated 3rd February 1958.
5. Maratha 4 pages dated 8th February 1958.

Total 5 papers.

NOTE.—All these papers are attached herewith.

List of documents to be called for by petitioner in evidence

S. No.	Description of Document	In whose custody	Remarks
(1)	Nomination papers, scrutiny decisions and return of election expenses with documents of both Petitioner and Respondent.	Collector, Aurangabad.	
(2)	File of complaint of Shir Moghe.	Deputy Director of Education, Aurangabad.	
(3)	File of complaints lodged with Presiding Officer, Jalna, Booth Nos. 2, 5, 9, 10, 16, 20 for conveyance.	Collector, Aurangabad.	
(4)	Files of Complaints of personification at Booth-Badnapur, Taluqa Jalna and Kumbhar Pimpalgaon, Taluqa Ambad.	do.	
(5)	Complaint of Election Agent, Shivajirao Deshmukh with Presiding Officer Kupta and connected file.	do.	
(6)	Appointment of Polling, Counting and Election Agents of Respondent.	do.	
(7)	Sealed envelopes containing Ballot Box-wise ballot papers (at the counting).		
(8)	Sealed lists of voters from each booth.	do.	
(9)	Ballot paper account of each booth.	do.	
(10)	Files of enquiries by D. S. P., Aurangabad in relation to various election offences.	do.	
(11)	Connected files from the Returning Officer.	do.	

NOTE.—The Petitioner reserves his right to call for, produce and/or rely upon any other documents though not included in this list.

Petitioner.

The enclosures to the petition which are in the regional languages are not being published.

[No. 82/3/58.]

By Order,

DIN DAYAL, Under Secy.